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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,966	06/20/2002	Stephen Richard Hellaby	0290-0180P	2811

2292 7590 08/25/2005

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

.DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/030,966

Applicant(s)

HELLABY ET AL.

Examiner

Drew E. Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-18, 20-32, 37 and 41-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-18, 20-32, 37 and 41-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. The request filed on June 20, 2005 for an RCE based on parent Application No. 10/125,473 is acceptable and an RCE has been established. An action on the RCE follows.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 37 recites "the d[0.9] value is less than micrometers". It is not clear how many micrometers.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-12, 14-18, 20-29, 31-32, 37, and 41-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Shuford et al [Pat. No. 4,375,483].

Art Unit: 1761

Shuford et al teach a composition comprising flavor particulates suspended in oil (abstract), the particulates having a monomodal size distribution including d[0.5] of 5.8 micrometers and d[0.9] of 10.1 micrometers (column 5, Table I), lecithin (column 5, lines 36-56), free-flow agents such as silicas (column 5, lines 58-68) and tricalcium phosphate (column 4, line 44), emulsifiers (column 7, line 34), the composition inherently possessing a viscosity of 50-100 mpa/s, at least 95% adhesion, and a solids content of about 30%, the oil being liquid at room temperature, an absence of nuts, the use of any oil including rapeseed (column 2, line 44; column 3, line 35), and use of the composition as a baking improvement agent and on cookies (column 8, lines 11-22). Phrases such as "using a low shear high impact milling method" are merely preferred methods of making the claimed product.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 30 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shuford et al as applied above, in view of Huffman (Pat. No. 4,612,204).

Shuford et al teach the above mentioned components. Shuford et al do not recite ascorbic acid. Huffman teaches a composition comprising ascorbic acid (column 4, line 39). It would have been obvious to one of ordinary skill in the art to incorporate the

Art Unit: 1761

ascorbic acid of Huffman into the invention of Shuford et al since both are directed to food compositions, since Shuford et al already included optional ingredients such as flavors (column 7, lines 30-68), and since the ascorbic acid of Hulman would have provided added flavor while also being a good source of vitamin C.

### ***Response to Arguments***

9. Applicant's arguments filed June 20, 2005 have been fully considered but they are not persuasive.

Applicant argues that Shuford et al do not teach a monomodal distribution. However, Shuford et al clearly teach a monomodal distribution (column 5, Table I).

Applicant argue that the silica of Shufors et al was not needed in the present application. However, this appears to overlook the fact that nearly all of the present claims require a "free flow enhancing agent".

Applicant argues that Shuford et al did not include an adhesiveness of at least 85%. However, Shuford et al teaches an identical composition to that which is currently claimed and therefore is assumed to have inherently possessed the same qualities and properties until proven otherwise.


Applicant argues that claim 46 was not addressed. However, all of the components of Shuford et al were flavoring or seasoning components.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
DREW BECKER  
PRIMARY EXAMINER  
8-23-05